

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN WASHINGTON REGION  
STATE OF WASHINGTON

CONCERNED FRIENDS OF FERRY  
COUNTY and DAVID L. ROBINSON,

Petitioners,

v.

FERRY COUNTY,

Respondent,

RIPARIAN OWNERS OF FERRY COUNTY  
and FERRY COUNTY CATTLEMAN'S  
ASSOCIATION,

Intervenors.

Case No. 01-1-0019

**EIGHTH COMPLIANCE ORDER**

**I. SYNOPSIS**

On October 7, 2011, the Board held a Compliance Hearing in Republic, Washington. The Board finds and concludes that Ferry County is not in compliance with the requirements of the Growth Management Act relating to the designation of Agricultural Lands of Long-Term Commercial Significance under RCW 36.70A.170, RCW 36.70A.030, RCW 36.70A.060(1)(b), and RCW 36.70A.020.

**II. BURDEN OF PROOF**

After the Board has entered a finding of non-compliance, the local jurisdiction is given a period of time to adopt legislation to achieve compliance.<sup>1</sup> After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local

<sup>1</sup> RCW 36.70A.300(3)(b).

jurisdiction has achieved compliance.<sup>2</sup> For purposes of Board review of the comprehensive plans and development regulations adopted by local governments in response to a non-compliance finding, the presumption of validity applies and the burden is on the challenger to establish that the new adoption is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.<sup>3</sup>

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."<sup>4</sup>

Within the framework of state goals and requirements, the Board must grant deference to local governments in how they plan for growth:

In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. RCW 36.70A.3201 (in part).

In sum, during compliance proceedings the burden remains on the Petitioner to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of Chapter 36.70A RCW (the Growth Management Act).<sup>5</sup> Where not clearly erroneous and thus within the framework of state goals and requirements, the planning choices of the local government must be granted deference.

---

<sup>2</sup> RCW 36.70A.330(1) and (2).

<sup>3</sup> RCW 36.70A.320(1), (2), and (3).

<sup>4</sup> *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

<sup>5</sup> RCW 36.70A.320(2).

### III. PROCEDURAL HISTORY

On October 7, 2011, the Board held a Compliance Hearing in Republic, Washington involving three coordinated cases: Case Nos. 97-1-0018, 01-1-0019, and 06-1-0003. The hearing panel for deciding these three cases is comprised of Raymond L. Paoella, Presiding Officer, and Board members Joyce Mulliken and Margaret Pageler. Petitioners were represented at the Compliance Hearing by Tim Trohimovich, attorney for Futurewise, and David Robinson, pro se. Respondent was represented at the Compliance Hearing by Brian D. Amsbary, attorney for Ferry County. Scott L. Simmons appeared at the Compliance Hearing on behalf of Riparian Owners of Ferry County and the Ferry County Cattleman's Association, Intervenor limited to Case No. 01-1-0019.

At the October 7, 2011 hearing, Mr. Simmons informed the Board that Intervenor had not been served with the prehearing briefing in these cases. Mr. Simmons moved to strike all of the prehearing briefing. The Board denied this motion to strike briefing, but the Board provided Mr. Simmons and the other parties with an opportunity to submit post-hearing briefing by October 21, 2011. Also, Mr. Simmons presented oral argument at the October 7 Compliance Hearing limited to Case No. 01-1-0019.

This Compliance Order decides the compliance issues presented in Case No. 01-1-0019 (Agricultural Lands of Long-Term Commercial Significance). A Compliance Order issued on December 1, 2011 decided the issues presented in Case Nos. 97-1-0018, and 06-1-0003 (Fish and Wildlife Habitat Conservation Areas).

### IV. DISCUSSION

#### A. AGRICULTURAL LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE

##### 1. Applicable Law

Each county shall designate where appropriate: "Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1).

1 The term "Agricultural land" is defined by statute as follows:

2 "Agricultural land" means land primarily devoted to the commercial production of  
3 horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products  
4 or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the  
excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
hatcheries, or livestock, and that has long-term commercial significance for  
agricultural production.<sup>6</sup>

5 The term "Urban growth" is defined by statute as follows:

6 "Urban growth" refers to growth that makes intensive use of land for the location  
7 of buildings, structures, and impermeable surfaces to such a degree as to be  
8 incompatible with the primary use of land for the production of food, other  
9 agricultural products, or fiber, or the extraction of mineral resources, rural uses,  
10 rural development, and natural resource lands designated pursuant to RCW  
36.70A.170. A pattern of more intensive rural development, as provided in RCW  
36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas,  
11 urban growth typically requires urban governmental services. "Characterized by  
12 urban growth" refers to land having urban growth located on it, or to land located  
in relationship to an area with urban growth on it as to be appropriate for urban  
growth.<sup>7</sup>

13 The term "Long-term commercial significance" is defined by statute as follows:

14 "Long-term commercial significance" includes the growing capacity, productivity,  
15 and soil composition of the land for long-term commercial production, in  
consideration with the land's proximity to population areas, and the possibility of  
more intense uses of the land.<sup>8</sup>

16 In *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d  
17 488, 502 (2006), the Washington Supreme Court held:

18 [A]gricultural land is land: (a) not already characterized by urban growth (b) that  
19 is primarily devoted to the commercial production of agricultural products  
20 enumerated in RCW 36.70A.030(2), including land in areas used or capable of  
21 being used for production based on land characteristics, and (c) that has long-  
term commercial significance for agricultural production, as indicated by soil,  
growing capacity, productivity, and whether it is near population areas or  
22 vulnerable to more intense uses. We further hold that counties may consider the  
development-related factors enumerated in WAC 365-190-050(1) in determining  
23 which lands have long-term commercial significance.

24 <sup>6</sup> RCW 36.70A.030(2).

25 <sup>7</sup> RCW 36.70A.030(19).

<sup>8</sup> RCW 36.70A.030(10).

1 RCW 36.70A.170(2) provides that in making agricultural lands designations, counties and  
2 cities shall consider the guidelines established by the Department of Commerce pursuant to  
3 RCW 36.70A.050(1). Under RCW 36.70A.050, these are “minimum guidelines” that apply to  
4 all jurisdictions “to guide the classification” of agricultural lands. The Department of  
5 Commerce “minimum guidelines” are codified in WAC Chapter 365-190.

6 WAC 365-190-050(3)(b)(ii) provides that in determining whether lands are used or capable  
7 of being used for agricultural production, counties and cities shall use the land-capability  
8 classification system of the United States Department of Agriculture Natural Resources  
9 Conservation Service as defined in relevant Field Office Technical Guides. These eight  
10 classes are incorporated by the United States Department of Agriculture into map units  
11 described in published soil surveys, and are based on the growing capacity, productivity and  
12 soil composition of the land.

13 WAC 365-190-050(3)(c) provides 11 non-exclusive criteria that counties should consider in  
14 determining whether the land has long-term commercial significance for agriculture:

- 15 (i) The classification of prime and unique farmland soils as mapped by the  
16 Natural Resources Conservation Service;
- 17 (ii) The availability of public facilities, including roads used in transporting  
18 agricultural products;
- 19 (iii) Tax status, including whether lands are enrolled under the current use tax  
20 assessment under chapter 84.34 RCW and whether the optional public benefit  
21 rating system is used locally, and whether there is the ability to purchase or  
22 transfer land development rights;
- 23 (iv) The availability of public services;
- 24 (v) Relationship or proximity to urban growth areas;
- 25 (vi) Predominant parcel size;
- 26 (vii) Land use settlement patterns and their compatibility with agricultural  
practices;
- (viii) Intensity of nearby land uses;
- (ix) History of land development permits issued nearby;
- (x) Land values under alternative uses; and
- (xi) Proximity to markets.

1 When applying the criteria for long-term commercial significance, "the process should result  
2 in designating an amount of agricultural resource lands sufficient to maintain and enhance  
3 the economic viability of the agricultural industry in the county over the long term; and to  
4 retain supporting agricultural businesses, such as processors, farm suppliers, and  
5 equipment maintenance and repair facilities."<sup>9</sup>

6 Each county shall adopt development regulations to assure the conservation of designated  
7 agricultural lands – these development regulations shall assure that the use of lands  
8 adjacent to agricultural lands shall not interfere with the continued use, in the accustomed  
9 manner and in accordance with best management practices, of these designated lands for  
10 the production of food or agricultural products.<sup>10</sup> RCW 36.70A.060(1)(b) provides:

11 Counties and cities shall require that all plats, short plats, development permits,  
12 and building permits issued for development activities on, or within five hundred  
13 feet of, lands designated as agricultural lands, forest lands, or mineral resource  
14 lands, contain a notice that the subject property is within or near designated  
15 agricultural lands, forest lands, or mineral resource lands on which a variety of  
16 commercial activities may occur that are not compatible with residential  
17 development for certain periods of limited duration. The notice for mineral  
18 resource lands shall also inform that an application might be made for mining-  
19 related activities, including mining, extraction, washing, crushing, stockpiling,  
20 blasting, transporting, and recycling of minerals.

21 Development regulations shall be consistent with and implement the comprehensive plan.  
22 RCW 36.70A.040(4)(d).

23 One of the 13 planning goals of the GMA addresses natural resource industries: "Maintain  
24 and enhance natural resource-based industries, including productive timber, agricultural,  
25 and fisheries industries. Encourage the conservation of productive forest lands and  
26 productive agricultural lands, and discourage incompatible uses." RCW 36.70A.020(8).

---

<sup>9</sup> RCW 36.70A.050(5).

<sup>10</sup> RCW 36.70A.060(1)(a).

1 Under the GMA, "natural resource lands," include agricultural, forest, and mineral resource  
2 lands. "Natural resource lands are protected not for the sake of their ecological role but to  
3 ensure the viability of the resource-based industries that depend on them. Allowing  
4 conversion of resource lands to other uses or allowing incompatible uses nearby impairs the  
5 viability of the resource industry."<sup>11</sup>

## 6 **2. Prior Compliance Order**

7 In Case No. 01-1-0019 (Mar. 23, 2010 Compliance Order), the Board found Ferry County  
8 out of compliance with the GMA relating to Agricultural Lands of Long-Term Commercial  
9 Significance as follows:

- 10 • Non-Compliance with RCW 36.70A.020(8) for failing to maintain and enhance  
11 the agricultural industry.
- 12 • Non-Compliance with RCW 36.70A.040(3)(b) for failing to designate agricultural  
13 lands and adopt development regulations conserving agricultural lands.
- 14 • Non-Compliance with RCW 36.70A.170(1)(a) for failing to designate ALOLTCS.

## 15 **3. Recent Legislative Action by Ferry County**

16 On August 8, 2011, Ferry County adopted three pieces of legislation in response to the  
17 Board's March 23, 2010 Compliance Order:

- 18 • Development Regulations Ordinance #2011-03 amending Sections 9.00, 9.01,  
19 and 9.02 of Ordinance #2009-04, relating to the designation and protection of  
20 Agricultural Lands of Long-Term Commercial Significance.<sup>12</sup> The "8-8-11  
21 APPENDIX A" to Ordinance 2011-03 is entitled "CRITERIA FOR DESIGNATING  
22 AGRICULTURAL LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE IN  
23 FERRY COUNTY, WASHINGTON."<sup>13</sup>
- 24 • Ordinance #2011-04 amending Ordinance #2011-01, Sections 7.4.29, 7.4.30,  
25 7.4.31, 7.4.32, 7.4.33, 7.4.34, and 7.7.4, relating to agricultural lands.<sup>14</sup>

---

26 <sup>11</sup> *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47 (1998) (quoting  
Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present,  
and Future*, 16 U. PUGET SOUND L. REV. 867 (1993)).

<sup>12</sup> Ferry County's Index to Compliance Report, Attachment 4 (August 25, 2011).

<sup>13</sup> Ferry County's Index to Compliance Report, Attachment 5 (August 25, 2011).

<sup>14</sup> Ferry County's Index to Compliance Report, Attachment 6 (August 25, 2011).

- Resolution No. 2011-45 (Findings of Fact) entitled “Comprehensive Plan and Development Regulations Ordinance Relating to Agricultural Lands of Long Term Commercial Significance.”<sup>15</sup>

#### 4. Positions of the Parties

Petitioners make the following arguments: (1) Ferry County’s designation criteria and policies for Agricultural Lands of Long-Term Commercial Significance, contained in the Comprehensive Plan and in Appendix A to the Development Regulations, fail to comply with the requirements of RCW 36.70A.170 and RCW 36.70A.030; (2) Ferry County has failed to properly designate Agricultural Lands of Long-Term Commercial Significance as a result of serious errors of law and fact; and (3) the Natural Resource Lands notice requirement in the Comprehensive Plan is not in compliance with RCW 36.70A.060(1)(b) because it is limited to rural lands.

In addition, Petitioners submitted arguments relating to the designation of Forest Lands and Mineral Resource Lands in Ferry County. However, the Board cannot consider those arguments in the present case since Forest Lands and Mineral Resource Lands fall outside of the scope of the issues presented for review in this case.

Also, Petitioner Robinson asserts that because Ferry County has not designated Agricultural Resource Lands for privately-owned farms, all agricultural lands fall into the “rural lands” category, subject to a 2.5 acre lot size, and this is clearly erroneous. However, the Board cannot consider any arguments related to rural lands lot size in the present case since that falls outside of the scope of the issues presented for review in this case and would constitute a collateral attack as to rural densities. Furthermore, the Board notes that Section 9.02 of the Development Regulations Ordinance provides that “[a]gricultural Lands of Long-Term Commercial Significance shall not be divided into parcels less than 20 acres.”<sup>16</sup>

---

<sup>15</sup>Ferry County’s Index to Compliance Report, Attachment 7 (August 25, 2011).

<sup>16</sup> Ferry County’s Index to Compliance Report, Attachment 4, page 16 (August 25, 2011).



Respondent Ferry County asserts that: (1) the County's Comprehensive Plan and Development Regulations designate and conserve Agricultural Resource Lands in compliance with the Growth Management Act; (2) the applicable statutes and regulations vest the County with discretion in the designation and protection of Agricultural Resource Lands; and (3) Petitioners simply disagree with the County's policy choices.

Intervenors Riparian Owners of Ferry County and Ferry County Cattleman's Association argue that there is no threat of development and loss of Agricultural lands in Ferry County. Intervenors further argue that if all of Ferry County's projected growth within the planning time frame were to occur in only the town of Republic's UGA, there is insufficient growth to impact the agricultural lands within an area less than a mile from Republic.

#### **5. Board Analysis – Agricultural Lands of Long Term Commercial Significance**

The GMA requires counties to designate Agricultural Lands of Long-Term Commercial Significance (Agricultural Resource Lands) based on the following three statutory factors:

Factor 1: The land is not already characterized by urban growth,

Factor 2: The land is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for agricultural production based on land characteristics, and

Factor 3: The land has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.

Petitioners have the burden to prove noncompliance as to the designation of Agricultural Resource Lands. The challenged actions (Ferry County Ordinances 2011-03 and 2011-04) will now be reviewed to determine whether the statutory requirements for designating Agricultural Resource Lands were considered and complied with:

#### **Ordinance 2011-03, 8-8-11 Appendix A (Designation Criteria)**

Appendix A to Ordinance 2011-03 contains the "Methodology for Designation of Agricultural Lands of Long-Term Commercial Significance" and states in pertinent part as follows:

1 [T]he following process is established for determination of existence,  
2 identification and designation of Agricultural Lands of Long-Term Commercial  
3 Significance within Ferry County. The process used shall be an objective,  
4 analytical process to assess lands potentially suitable for agricultural uses. It is  
based on aerial photography, the WAC guidelines and a numerical score which  
was reviewed by area to make an accurate determination.<sup>17</sup>

5 Appendix A, Criteria One is entitled “Soil Classification” and contains a detailed discussion  
6 of the National Resources Conservation Service Soil Classes, relative abundance of soil  
7 types in Ferry County, and the County’s numerical scoring system for different soil types.  
8 Appendix A also discusses the numerical scoring system associated with some of the WAC  
9 365-190-050 Criteria for determining whether the land has “long-term commercial  
significance” for agriculture.

10  
11 In Appendix A, Ferry County considered statutory Factor 3 (“long-term commercial  
12 significance”) – Appendix A sets forth six “Criteria” for designating Agricultural Resource  
13 Lands in Ferry County. These six local Criteria all relate to statutory Factor 3. However,  
14 Appendix A does not refer to or consider statutory Factor 1 (“not already characterized by  
15 urban growth”) or Factor 2 (“primarily devoted to the commercial production of agricultural  
products enumerated in RCW 36.70A.030(2)”).

16 In addition to the above three statutory factors for designating Agricultural Resource Lands,  
17 WAC 365-190-050(3)(c) provides 11 minimum guidelines that counties should consider in  
18 determining “long-term commercial significance.” In Appendix A, Ferry County considered 9  
19 out of the 11 WAC guidelines and assigned numerical point values for those 9 guidelines.  
20 However, two of the WAC guidelines –(3)(c)(ix) and –(3)(c)(x) were merely listed in  
21 Appendix A with no actual consideration and no numerical score assigned.<sup>18</sup>

22  
23 <sup>17</sup> Ferry County’s Index to Compliance Report, Attachment 5, page 1 (August 25, 2011).

24 <sup>18</sup> These two WAC guidelines are (ix) “History of land development permits issued nearby” and (x) “Land  
25 values under alternative use.” Ferry County’s Index to Compliance Report, Attachment 5, page 7 (August 25,  
2011).

Moreover, Development Regulations Ordinance #2011-03 (to which the Appendix A designation criteria are attached) defines "Agricultural Lands of Long-Term Commercial Significance" in Ordinance Sections 4.00 and 9.00, and that definition corresponds only to statutory Factor 3. Statutory Factors 1 and 2 are not referred to in the definition set forth in Ordinance Sections 4.00 and 9.00. Similarly, Ordinance 2011-03, Section 9.01 entitled "Designations" does not refer to any of the three statutory Factors for designating Agricultural Resource Lands.

In summary, the Ordinance 2011-03, Appendix A designation criteria do reflect a consideration of statutory Factor 3 (long-term commercial significance) but do not reflect a consideration of Factor 1 (not already characterized by urban growth) or Factor 2 (primarily devoted to commercial production of 13 enumerated agricultural products). In adopting criteria for the designation of Agricultural Lands of Long-Term Commercial Significance, Ferry County failed to consider all three statutory Factors as required by RCW 36.70A.170(1)(a) and RCW 36.70A.030.

#### **Ordinance 2011-04 (Comprehensive Plan/Natural Resource Policies)**

Ordinance 2011-04, Section 7.4.30, Policy #6 states:

In determining which lands to designate for long term commercial agricultural use, comply with the requirements of the GMA and consider the guidance provided at WAC 365-190 and the following:

- a) NRCS Soils Classification;
- b) the presence of nearby urban growth areas, limited areas of more intense rural development, or small communities that might impinge on or detract from the viability of long term agricultural use;
- c) location in a flood plain;
- d) current parcel sizes, ownership and use, to the degree known;
- e) taxation as agricultural land or enrollment in an agricultural conservation program;
- f) the overall size and shape of the potential area to be designated and the adjacent or surrounding geography or terrain.<sup>19</sup>

---

<sup>19</sup> Ferry County's Index to Compliance Report, Attachment 6, page 3 (August 25, 2011).

1 Ordinance Section 7.4.30, Policy #2 is to "Designate sufficient commercially significant  
2 agricultural and forest land to ensure the County maintains a critical mass of such lands for  
3 present and future use."<sup>20</sup>

4 However, Ferry County's Natural Resource Policies pertaining to agriculture do not refer to  
5 and do not consider statutory Factor 1 (not already characterized by urban growth) or Factor  
6 2 (primarily devoted to commercial production of 13 enumerated agricultural products). As to  
7 Factor 2, for example, there is evidence in the record that Ferry County produces hay,<sup>21</sup>  
8 which is one of the 13 enumerated agricultural products in RCW 36.70A.030(2). In  
9 designating Agricultural Resource Lands under the GMA, Ferry County must consider the  
10 commercial production of these enumerated agricultural products.

11 Also, Ordinance 2011-04, Section 7.4.31 sets forth a definition of "Agricultural Lands of  
12 Long-Term Commercial Significance" that corresponds only to statutory Factor 3. Statutory  
13 Factors 1 and 2 are not referred to in the definition set forth in Ordinance Section 7.4.31.

#### 14 **Comprehensive Plan Future Land Use Map**

15 Ordinance 2011-04, Section 7.4.34 states: "The Comprehensive Plan Future Land Use  
16 Map designates Agricultural Lands of Long Term Commercial Significance." This statement  
17 is repeated in Ordinance 2011-04 preamble language.<sup>22</sup> Finding of Fact No. 9 in Ferry  
18 County Resolution 2011-45 states that "actual designation of Natural Resource Lands,  
19 specifically agricultural lands of long term commercial significance, is done on the Land Use  
20 Map of the Comprehensive Plan."<sup>23</sup>

21 But the record does not contain Ferry County's "Comprehensive Plan Future Land Use  
22 Map." Rather, the record contains a one page (8½" by 11") grid map entitled "Ag Land of

23 <sup>20</sup> Ferry County's Index to Compliance Report, Attachment 5, page 2 (August 25, 2011).

24 <sup>21</sup> IR 501 in Tab 501, Washington State University, *Transportation Characteristics and Needs of the  
Washington Hay Industry: Producers and Processors*, page 6 (November 2004).

25 <sup>22</sup> Ferry County's Index to Compliance Report, Attachment 6, page 4 (August 25, 2011).

26 <sup>23</sup> Ferry County's Index to Compliance Report, Attachment 7, page 3-4 (August 25, 2011).

1 Long Term Commercial Significance.” This small scale map appears to show a blackened  
2 portion in the northern part of Ferry County with the label “ALOLTCS.” This map does not  
3 identify any future land uses except for the reference to “Ag Land” in the title and the  
4 reference to “ALOLTCS” in the legend. The map is attached to Ordinance 2011-04 but is not  
5 referred to in the ordinance text.<sup>24</sup>

6 The GMA provides that a Comprehensive Plan shall consist of a map or maps, together with  
7 descriptive text. The plan shall be an internally consistent document and all elements shall  
8 be consistent with the Future Land Use Map. RCW 36.70A.070. After reviewing the record  
9 here, the Board notes that Ferry County’s Comprehensive Plan appears to lack a Future  
10 Land Use Map – the map entitled “Ag Land of Long Term Commercial Significance” does  
11 not show a range of future land uses.

12 The absence of a “Future Land Use Map” in this record makes it very difficult to ascertain  
13 the County’s intent in designating Agricultural Resource Lands. The County may have  
14 intended for the map entitled “Ag Land of Long Term Commercial Significance” to be the  
15 formal designation of Agricultural Resource Lands, but the record is unclear on this. And the  
16 small scale of this particular map makes it very difficult to identify which lands have been  
17 shaded as “ALOLTCS.”

18 Ordinance 2011-04 contains a textual reference to a total designation of 478,968 acres.

19 Finding of Fact No. 8 in Ferry County Resolution 2011-45 states in pertinent part as follows:

20       Ferry County finds that state and federal grazing leases have a significant impact  
21       on our economy and the long term significance of agriculture . . . and are hereby  
22       designated as agricultural lands of long term commercial significance (Natural  
23       Resource Lands). This comprises 478,968 acres as ALOLTCS.

24 It appears that Ferry County intended to designate only state and federal grazing lands, and  
25 did not intend to designate any privately owned farm land used for crops or grazing. There

26 <sup>24</sup> Ferry County’s Index to Compliance Report, Attachment 6, page 5 (August 25, 2011).

1 are "25,215 acres as actual privately held 'land in farms' under agricultural use" in Ferry  
2 County.<sup>25</sup> The County Commissioners found in Ordinance 2011-03 that "Ferry County's  
3 primary agricultural product is livestock (cattle) and is entirely dependent upon public  
4 rangeland for grazing."

5 There is evidence in the record indicating that Ferry County's viable crop land is quite  
6 limited. For example, according to the Washington State Department of Agriculture, out of  
7 39 Washington counties Ferry County is ranked last (along with Pend Oreille and Skamania)  
8 as to market value of crop and livestock products. Ferry County's total market value is \$3  
9 Million compared to \$1.2 Billion each for Yakima and Grant Counties.<sup>26</sup> Good crop land is  
10 limited due to soils, severe winters, and sparse rainfall.<sup>27</sup> The WSU Ferry County and  
11 Colville Reservation Extension stated that the profitability of agriculture in Ferry County is  
12 limited due to soils, climate, lack of agricultural land blocks, dependence on government  
13 grazing lands, and distance to source of inputs and markets.<sup>28</sup>

14 Although the evidence suggests that private farm land is limited, there is some private farm  
15 land in Ferry County producing hay, animal products, and crops. Soil composition is a key  
16 consideration in designating Agricultural Resource Lands,<sup>29</sup> and the record contains some  
17 large scale maps entitled "Ag Land of Long Term Commercial Significance" that show soil  
18 types in Areas 1 through 4 of Ferry County.<sup>30</sup> Map Areas 1 through 3 show that flood plains  
19 located outside of publicly-owned lands include prime farmland soils that have a land  
20 capability classification of 2 through 4 in the flood plains, such as the San Poil valley flood  
21 plain on the Area 3 map.<sup>31</sup> But the County has provided no explanation (no Findings of Fact)

---

21 <sup>25</sup> Ferry County's Index to Compliance Report, Attachment 4, page 3 (August 25, 2011).

22 <sup>26</sup> Ferry County's Index to Compliance Report, Attachment 11 (August 25, 2011).

23 <sup>27</sup> Ferry County Comprehensive Plan, Section 12.3.

24 <sup>28</sup> Ferry County's Index to Compliance Report, Attachment 9 (August 25, 2011).

25 <sup>29</sup> RCW 36.70A.030(10).

26 <sup>30</sup> IR 500 in Tab 500, "Ag Land of Long Term Commercial Significance maps" Areas 1 through 3. These maps  
were produced by Ferry County during their analysis of potential Agricultural Resource Lands but apparently  
were not approved or formally adopted by the County Commissioners.

<sup>31</sup> IR 500 in Tab 500, "Ag Land of Long Term Commercial Significance maps" Areas 1 through 3.

1 as to why it does not intend to designate any private farm land or any fee lands within the  
2 Colville Indian Reservation.

3 **Resolution No. 2011-45 -- Ferry County's Findings of Fact**

4 In Resolution No. 2011-45, the County separately adopted Findings of Fact relating to  
5 Agricultural Resource Lands. However, there are no Findings of Fact or determinations  
6 regarding whether or not the state and federal grazing lands (or other areas) are already  
7 characterized by urban growth. There are also no Findings of Fact or determinations  
8 regarding whether or not the state and federal grazing lands (or other areas) are primarily  
9 devoted to the commercial production of agricultural products enumerated in RCW  
10 36.70A.030(2).

11 Meaningful appellate review requires entry of adequate and detailed findings of fact and  
12 conclusions of law. *Citizens for Responsible and Organized Planning v. Chelan Co.*, 105  
13 Wn. App. 753 (2001). When counties designate Natural Resource Lands, they should  
14 include in their adoption legislation written Findings of Fact on meeting the applicable  
15 statutory Factors, such as a Finding of Fact that the proposed Agricultural Resource Lands  
16 are "not already characterized by urban growth."

17 After reviewing the entire record, the Board determines that there is no substantial evidence  
18 in the record to support a finding that Ferry County considered all three statutory Factors in  
19 designating Agricultural Lands of Long-Term Commercial Significance. Ferry County failed  
20 to comply with the requirements in RCW 36.70A.170 and RCW 36.70A.030 to designate  
21 Agricultural Lands of Long-Term Commercial Significance.

22 **Notice of Designated Agricultural Resource Lands**

23 RCW 36.70A.060(1)(b) requires that all plats and permits issued for development activities  
24 within 500 feet of Natural Resource Lands include a notice that incompatible uses may  
25 occur nearby. Ordinance 2011-04, Section 7.4.30.13" extends this requirement to 1320  
26

1 feet.<sup>32</sup> The County's notice is limited to rural lands, but the statute applies to all lands, not  
2 just to rural lands. The Board notes also that the County's provision in Ordinance 2011-04  
3 for notice within 1320 feet of Natural Resource Lands is different from the 300 foot notice  
4 provided in Sections 7.4.42, 7.7.5, and 7.7.7.<sup>33</sup> Thus, the County's Notice of Designated  
5 Agricultural Resource Lands (Ordinance 2011-04, Section 7.4.30.13) is not in compliance  
6 with RCW 36.70A.060(1)(b).

### 7 **Conclusions**

- 8 • Ferry County's designation criteria for Agricultural Lands of Long-Term Commercial  
9 Significance do not comply with the requirements in RCW 36.70A.170 and RCW  
10 36.70A.030.
- 11 • Ferry County failed to consider whether potential Agricultural Resource Lands were  
12 not already characterized by urban growth.
- 13 • Ferry County failed to consider whether potential Agricultural Resource Lands were  
14 primarily devoted to the commercial production of the agricultural products  
15 enumerated in RCW 36.70A.030(2).
- 16 • There is no substantial evidence in the record to support a finding that Ferry County  
17 considered all three statutory Factors in designating Agricultural Lands of Long-Term  
18 Commercial Significance.
- 19 • Ferry County failed to comply with the requirements in RCW 36.70A.170 and RCW  
20 36.70A.030 to designate Agricultural Lands of Long-Term Commercial Significance.
- 21 • Ferry County has made no Findings of Fact as to why it does not intend to designate  
22 any private farm land or any fee lands within the Colville Indian Reservation as  
23 Agricultural Resource Lands.
- 24 • Ferry County's Notice of Designated Agricultural Resource Lands (Ordinance 2011-  
25 04, Section 7.4.30.13) is not in compliance with RCW 36.70A.060(1)(b).

---

26 <sup>32</sup>Ferry County's Index to Compliance Report, Attachment 6, page 3 (August 25, 2011).

<sup>33</sup> The County will want to resolve this inconsistency when it amends its regulations to bring them into  
compliance with the statutory 500 ft minimum notice distance.



- The Board determines that Ordinance #2011-03 (relating to Agricultural Resource Lands) is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Growth Management Act.
- The Board determines that Ordinance #2011-04 (relating to Agricultural Resource Lands) is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Growth Management Act.

## B. INVALIDITY

For Ferry County's failure to designate agricultural lands, Petitioners request that the Board "impose invalidity on Ferry County's Future Land Use Map and apply invalidity to all lands with land use capability soils 2 through 4 and all lands within 500 feet of these areas."<sup>34</sup>

Respondent opposes invalidity and asserts that Petitioners have completely failed to identify specific provisions that should be found invalid.<sup>35</sup>

Under RCW 36.70A.302(1), the Board may determine that part or all of a comprehensive plan or development regulations are invalid if the Board:

- (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
- (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
- (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

The Board agrees with Ferry County's assertion that Petitioners have failed to identify particular parts of the plan or regulations that should be found invalid and that substantially interfere with fulfillment of the goals of the GMA. Petitioners have failed to show how invalidity would protect any agricultural lands or promote fulfillment of specific GMA goals.

---

<sup>34</sup> Objection to a Finding of Compliance & Petition for Imposition of Invalidity, page 34 (Sept. 7, 2011).

<sup>35</sup> Ferry County's Reply Brief in Support of Compliance Report, page 8 (Sept. 29, 2011).

As to Petitioners' request to apply invalidity to lands with certain soil types, the Board finds this argument to have no merit. The Board's invalidity authority is limited by statute to potential invalidation of comprehensive plans and development regulations. There is no statutory authority to apply invalidity to land. Accordingly, the Board declines to issue a determination of invalidity.

#### V. ORDER

Ferry County is not in compliance with the requirements of the Growth Management Act relating to the designation of Agricultural Lands of Long-Term Commercial Significance under RCW 36.70A.170, RCW 36.70A.030, RCW 36.70A.060(1)(b), and RCW 36.70A.020.

This case is remanded to Ferry County. Ferry County is ordered to bring its Comprehensive Plan and Development Regulations into compliance with the Growth Management Act according to the following schedule:

Item	Date Due
Compliance Due	May 28, 2012
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	June 8, 2012
Objections to a Finding of Compliance	June 22, 2012
Response to Objections	July 2, 2012
<b>Compliance Hearing – Telephonic Call 360 407-3780 and use pin 237480#</b>	<b>July 12, 2012 10:00 a.m.</b>

Entered this 16th day of December, 2011.

\_\_\_\_\_  
Raymond L. Paoella, Board Member

\_\_\_\_\_  
Joyce Mulliken, Board Member

\_\_\_\_\_  
Margaret Pageler, Board Member

1 Pursuant to RCW 36.70A.300 this is a final order of the Board.

2 Reconsideration. Pursuant to WAC 242-03-832, you have ten (10) days from the date of mailing of  
3 this Order to file a petition for reconsideration. The original and three copies of a motion for  
4 reconsideration, together with any argument in support thereof, should be filed with the Board by  
5 mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration  
6 directly to the Board, with a copy to all other parties of record. Filing means actual receipt of the  
7 document at the Board office. RCW 34.05.010(6), WAC 242-03-240, and WAC 242-03-330. The filing  
8 of a motion for reconsideration is not a prerequisite for filing a petition for judicial  
9 review.

10 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to  
11 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted  
12 by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part  
13 V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed  
14 with the appropriate court and served on the Board, the Office of the Attorney General, and all parties  
15 within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board  
16 may be accomplished in person or by mail, but service on the Board means actual receipt of the  
17 document at the Board office within thirty days after service of the final order. A petition for judicial  
18 review may not be served on the Board by fax or by electronic mail.

19 Service. This Order was served on you the day it was deposited in the United States mail. RCW  
20 34.05.010(19).